

JAN 12 2006**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NESTOR TORRES ASUNCION,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-70188

Agency No. A91-995-868

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted January 9, 2006**

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Nestor Torres Asuncion, a native and citizen of the Philippines, petitions for review of an order of the Board of Immigration Appeals ("BIA") denying his motion to remand. We have jurisdiction pursuant 8 U.S.C. § 1252. Reviewing for

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

abuse of discretion, *Malhi v. INS*, 336 F.3d 989, 993 (9th Cir. 2003), we deny the petition for review.

The BIA did not abuse its discretion in denying Asuncion's motion to remand so that he could reapply for cancellation of removal, because Asuncion did not include any evidence in his motion that his new wife, who is a legal permanent resident, would experience "exceptional and extremely unusual hardship" if he was removed to the Philippines, and he therefore failed to make out a prima facie case for relief. *See* 8 U.S.C. § 1229b(b)(1)(D); *Rodriguez v. INS*, 841 F.2d 865, 867 (9th Cir. 1987) (noting that motion to remand requires showing of prima facie eligibility for relief sought).

The voluntary departure period was stayed, and that stay will expire upon issuance of the mandate. *See Desta v. Ashcroft*, 365 F.3d 741, 750 (9th Cir. 2004).

PETITION FOR REVIEW DENIED.